IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 27204 of 1999

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Between:

K. Kailasam, S/o. K. Butchaiah, R/o. Durshed (v),

Karimnagar (M) & District.

..... PETITIONER

AND

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1. Government of India, rep. By its Deputy Secretary, Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi-3.

2. Government of Andhra Pradesh, rep. By its Secretary, Department of Revenue (FF Divn.), Secretariat Buildings, A.P., Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly one in the nature of Writ of Mandamus by declaring 5the impugned action of the respondent No.1 herein in not considering the case of the petitioner for sanction of freedom fighters pension under the Swatantra Sainik Samman Pension Scheme, 1980 from the date of application of the petitioner dated 12-1-81 as illegal, void abinitio and the respondent No.1 herein may be further directed to consider the case of the petitioner herein for sanction of freedom fighters pension as per the recommendation of the 2nd respondent herein made in his letters No.31510/FF/A4/90-1&2 dated 14-2-90 and 23-9-93.

Counsel for the Petitioner: MR.Y. RAMA RAO

Counsel for Respondent No.1: MR. ARAJASHEKAR REDDY (SC FOR CG)

Counsel for Respondent No.2:

The Court made the following :

ORDER:

The petitioner claims that he participated in freedom struggle against the Nizam of Hyderabad State during 1947-48. It is his case that when the Government of Nizam issued arrest warrant he went underground. After Central Government framed Swatantrata Sainik Samman Pension Scheme, 1980 petitioner applied for pension under the said Scheme in 1981. For one reason or the other, the same was not processed. At last, the Government of Andhra Pradesh addressed a letter to first respondent herein No.31510/FF/A4/90-1, dated 14-2-1990 communicating the recommendation of the State Government in the case of Sri K. Kailasam S/o. K.

Buchaiah, resident of Durshad village, Karimnagar District for grant of pension under the Pension Scheme. By letter dated 16-12-1992, the Under Secretary to the Government of India sought clarification on two points, inter alia on the correct name of the person whose name is recommended. The Government of Andhra Pradesh took its own time and by letter No.31510/FF.II/A-4/90-2, dated 23-9-1993 while clarifying that the petitioner, Sri K. Kailasam S/o. Sri K. Butchaiah participated in the freedom struggle against the Nizam Government during 1947-48, requested first respondent to consider the petitioner's case for sanction of Freedom Fighters Pension. Thereafter, the petitioner has sent two reminders on 29-9-1993 and 25-11-1999, in vain. Therefore, he filed the writ petition seeking direction to first respondent to sanction Freedom Fighters Pension.

The Government of India with a view to provide financial assistance to Freedom Fighters, formulated central scheme for grant of pension to freedom fighters from central revenue. The Scheme was commenced from 15-8-1972 to provide assistance to freedom fighters. The pension sanctioned under the said Scheme was found to be meager subject to the ceiling. Therefore, the Central Government introduced a comprehensive Scheme, namely, Swatantrata Sainik Samman Pension Scheme, 1980 (formerly known as Freedom Fighters' Pension Scheme, 1972). The anxiety of the Central Government in introducing the said Scheme is to provide help to needy freedom fighters, who in their evening of life were left without proper care. It is a welfare Scheme intended to discharge the debt that this Nation owes to those who sacrificed their life and spent the best part of their life in underground or languishing in British jails. Such being the noble object behind this Scheme, be it the Government of Andhra Pradesh or be it the Central Government cannot bestow casual approach.

In this case, it is appalling that though the petitioner filed application on 12-1-1981, still the matter is not able to break free from bureaucratic red tape. The Government of Andhra Pradesh has sent two communications on 14-2-1990 and 23-9-1993 clarifying all the points raised by the Central Government but still no sanction was made. It is one thing, if the Central Government considers and pass orders in which event at least a freedom fighter like the petitioner would know where he stands. It would be altogether a different thing if Central Government fails to take action or moves very slowly in the matter, it requires utmost urgency. The action or inaction on the part of the Central Government is culpable and requires a deeper probe. Therefore, this Court is of the considered opinion that a copy of this judgment should be sent to Central Vigilance Commission for enquiry into the matter and for making appropriate amends to avoid such indifferent action on the part of the concerned in processing the representations for Freedom Fighters Pension in spite of recommendations by the State Government.

The Calcutta High Court in **Chaitnya Charan Das v State of West Bengal**, considered the question whether a writ petition would lie at the instance of a freedom fighter to compel the Government of India to sanction pension. Justice S.B.Sinha (as His Lordship then was) held that the Central Government framed the scheme in exercise of its powers under Article 73 of the Constitution of India and that the said scheme confers enforceable right on the freedom fighter. His Lordship also

held that any deviation there from attracts Article 14 of the Constitution of India and any unfair or unreasonable State action can be questioned by filing a writ petition under Article 226 of the Constitution of India. It is appropriate to quote paragraphs 40, 41, 42 and 46 of the reported judgment.

40. Admittedly the Central Government has framed a scheme in exercise of its jurisdiction under Article 73 of the Constitution of India. Such schemes, the Central Government can frame in exercise of its executive power in absence of any legislation covering the field.

41. In my opinion a legal right does not mean the right flowing from a statute. A citizen, in my considered view, is entitled to maintain a writ application questioning the inaction on the part of the State to implement its policy decision. It may also question the validity and/or legality of an action on the part of the State which according to the petitioner is unfair, unreasonable, arbitrary or discriminatory.

42. Even a deviation or a departure from a policy decision attracts Article 14 of the Constitution of India.

46. There exists a catena of decisions where the Supreme Court as also other Courts have categorically laid down that any unfair or unreasonably State action can be questioned by filing a writ application in terms of Article 226 of the Constitution of India. It is not necessary to burden this judgment with other decisions on this point. Suffice it to point out that the Supreme Court itself in **Mukund Lal Bhandari v Union of India** entertained a writ application under Article 32 of the Constitution of India with regard to the said scheme.

In this case, the petitioner has patiently waited for the last two decades and his case went up and down between New Delhi and Hyderabad. No action worth mentioning has been taken by the Central Government. This is *ex facie* unreasonable and unfair. This Court seriously views this unfair inaction on the part of the Central Government in dispensing justice to freedom fighter, who fought against the Rulers.

Insofar as the relief is concerned, as the competent authority has not so far bestowed attention, it would not be proper for this Court to pass a positive order in favour of the petitioner. At this stage, to meet ends of justice – (the delay has already resulted in denial of justice to the petitioner) this Court directs the Deputy Secretary, Government of India (FF Division), Ministry of Home Affairs, New Delhi to pass appropriate orders in the matter within a period of two weeks from the date of receipt of this order. If no order is passed, it is needless to mention that this Court would take serious view of the matter. The first respondent shall also pay the costs of this petition to the petitioner quantified at Rs.2000/- (Rupees two thousand only).

The Writ Petition, with the above observations and directions, is accordingly allowed.

V.V.S. RAO, J.

14th October, 2004

Js

Note: Registry is directed to dispatch

a copy of this order to Central Vigilance

Commission for appropriate action

in the matter.

Dispatch a copy of this order by Monday.

That Rule Nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday the Fourteenth day of October, Two thousand and four.

ASSISTANT REGISTRAR

To

1. The Deputy Secretary, Government of India, Ministry of Home Affairs, Lok Nayak Bhavan, Khan Market, New Delhi-3.
2. The Secretary, Government of Andhra Pradesh, Department of Revenue (FF Divn.), Secretariat Buildings, A.P., Hyderabad.
3. The Central Vigilance Commission, Government of India, New Delhi.
4. 2 CD copies.